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HOUSE BILL 1273

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

HENRY KIKI SAAVEDRA

AN ACT

RELATING TO INSURANCE; PROVIDING FOR A NO-FAULT MOTOR VEHICLE
INSURANCE SYSTEM; ENACTING THE NO-FAULT INSURANCE ACT; REPEALING
THE MANDATORY FINANCIAL RESPONSIBILITY ACT; PROVIDING
ADMINISTRATIVE AND CRIMINAL PENALTIES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 23 of this act may be cited as the "No-Fault Insurance
Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
No-Fault Insurance Act:

A. "accident" means an occurrence involving the
operation or use of a motor vehicle as a motor vehicle that
results in accidental bodily injury or property damage;

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1 B. "accidental bodily injury" means bodily injury,
2 sickness, disease, disability or death resulting from an
3 accident, where the accident is unintended by the injured
4 person;

5 C. "added personal protection" means coverage that
6 provides the personal protection benefits described in Section 5
7 of the No-Fault Insurance Act;

8 D. "basic personal protection" means coverage that
9 provides the personal protection benefits described in Section 4
10 of the No-Fault Insurance Act;

11 E. "claim for relief" means a claim for economic or
12 non-economic loss, or both, arising from accidental bodily
13 injury proximately caused in whole or in part by the negligence
14 or intentional misconduct of another person; "claim for relief"
15 includes a claim by any individual other than the injured person
16 based on such injury;

17 F. "collateral benefit" means any benefit an
18 individual receives or is entitled to receive from any source,
19 other than basic or added personal protection, for economic loss
20 resulting from accidental bodily injury;

21 G. "driving under the influence of intoxicating
22 liquor or drug" means conduct that:

23 (1) is unlawful under Section 66-8-102 NMSA
24 1978;

25 (2) results in revocation of driving privileges

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1 under the Implied Consent Act; or

2 (3) results in a conviction described in
3 Subsection J of Section 66-8-102 NMSA 1978;

4 H. "economic loss" means pecuniary loss and monetary
5 expense incurred by or on behalf of an injured person;

6 I. "individual" means a natural person;

7 J. "injured person" means an individual who sustains
8 accidental bodily injury or the personal representative of a
9 deceased individual's estate;

10 K. "intentional misconduct" means any act or failure
11 to act intended to cause harm or which a reasonable person would
12 know would be likely to cause bodily injury or property damage.
13 "Intentional misconduct" does not include any act or failure to
14 act for the purpose of averting bodily harm to any person;

15 L. "loss of income from work" means loss of income
16 from work the injured person would have performed, or
17 unemployment compensation benefits the person would have
18 received, but for accidental bodily injury, reduced by any
19 income from work actually performed or by any income that would
20 have been earned in available appropriate work that the injured
21 person unreasonably failed to undertake;

22 M. "medical expenses" means reasonable expenses for
23 medical services incurred by or on behalf of an injured person,
24 including necessary medical, chiropractic, surgical,
25 radiological, dental, ambulance, hospital, medical

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1 rehabilitation, physical therapy and professional nursing
2 services, and drugs, medical equipment, medical supplies,
3 eyeglasses, hearing aids and prosthetic devices; but "medical
4 expenses" does not include:

5 (1) that portion of a charge for a room in a
6 hospital, clinic or convalescent or nursing home, or any other
7 institution engaged in providing nursing care and related
8 services, in excess of a reasonable and customary charge for
9 semi private accommodations, unless certified in writing as
10 medically required by the patient's health care provider; and

11 (2) treatments, services, products or
12 procedures that are experimental in nature, for research or not
13 primarily designed to serve a medical purpose;

14 N. "medical rehabilitation" means rehabilitation
15 services that are reasonable and necessary to reduce an injured
16 person's disability and restore him to his pre-accident level of
17 physical functioning;

18 O. "motor vehicle" means a self-propelled vehicle of
19 a kind required to be registered pursuant to the Motor Vehicle
20 Code for use on public streets and highways, other than a
21 vehicle with three or fewer load-bearing wheels;

22 P. "non-economic loss" means any loss other than
23 economic loss;

24 Q. "operation or use" means operation or use of a
25 motor vehicle as a motor vehicle, including operating,

1 occupying, entering or alighting from it, but does not include:

2 (1) conduct within the course of the business
3 of manufacturing, repairing, servicing, maintaining, washing or
4 selling motor vehicles, unless the conduct occurs while engaged
5 in the operation or use of the vehicle; and

6 (2) conduct in the course of loading or
7 unloading a motor vehicle unless the conduct occurs while
8 engaged in the operation or use of the vehicle;

9 R. "owner" means the person, other than a lienholder
10 or secured party, who owns or has title to a motor vehicle or is
11 entitled to the use and possession of a motor vehicle subject to
12 a security interest held by another person, but "owner" does not
13 include a lessee under a short-term lease or rental agreement
14 not intended as security;

15 S. "person" means an individual or any entity
16 recognized by the law;

17 T. "personal protection benefits" means benefits
18 payable without regard to fault for economic loss resulting from
19 accidental bodily injury, including basic personal protection
20 and added personal protection;

21 U. "personal protection insured" means:

22 (1) any named insured of a personal protection
23 policy;

24 (2) any individual customarily residing with a
25 named insured even though temporarily residing elsewhere,

1 including a student, who is:

2 (a) a spouse or blood-relative of a named
3 insured; or

4 (b) a minor in a named insured's custody
5 who has not reached the age of majority; or

6 (3) with respect to accidents within New
7 Mexico, an individual who sustains accidental bodily injury
8 while engaged in the operation or use of a motor vehicle insured
9 or deemed insured by the No-Fault Insurance Act for personal
10 protection benefits, or who, while not occupying any motor
11 vehicle, sustains accidental bodily injury caused by a motor
12 vehicle so insured;

13 V. "personal protection insurer" means an insurer or
14 qualified self-insurer that provides personal protection
15 benefits;

16 W. "personal protection policy" means a policy of
17 insurance or self-insurance plan that provides or is deemed to
18 provide at least basic personal protection benefits and
19 compulsory financial responsibility coverage as provided in the
20 No-Fault Insurance Act;

21 X. "replacement personal services" means expenses
22 reasonably incurred in obtaining ordinary and necessary services
23 from others, not members of the injured person's household, to
24 replace those the injured person would have performed for the
25 benefit of the household but for the accidental bodily injury;

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1 Y. "serious injury" means accidental bodily injury
2 that results in death, permanent serious disfigurement or
3 permanent serious impairment;

4 Z. "superintendent" means the superintendent of
5 insurance;

6 AA. "uncompensated economic loss" means that portion
7 of economic loss of an injured person that exceeds personal
8 protection benefits, collision coverage, if any, and collateral
9 benefits, except for loss resulting from a deductible; and

10 BB. "uninsured motorist" means an owner or other
11 person required to maintain a personal protection policy on a
12 motor vehicle pursuant to Section 3 of the No-Fault Insurance
13 Act that fails to maintain the required policy.

14 Section 3. [NEW MATERIAL] MOTOR VEHICLE INSURANCE
15 REQUIREMENTS--PENALTY. --

16 A. Each motor vehicle shall be covered under a
17 personal protection policy.

18 B. Every personal protection policy issued pursuant
19 to the No-Fault Insurance Act shall provide, at a minimum, basic
20 personal protection, together with compulsory financial
21 responsibility coverage as required in Subsection B of Section
22 11 of the No-Fault Insurance Act.

23 C. In addition to mandatory basic personal
24 protection and compulsory financial responsibility coverage,
25 every personal protection insurer shall make available

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1 additional insurance coverages, including added personal
2 protection, bodily injury and property damage liability,
3 collision and comprehensive physical damage.

4 D. Any person who violates the provisions of
5 Subsection A of this section is guilty of a misdemeanor and upon
6 conviction shall be sentenced to a fine not to exceed three
7 hundred dollars (\$300).

8 Section 4. [NEW MATERIAL] BASIC PERSONAL PROTECTION
9 COVERAGE. --Basic personal protection coverage shall consist of
10 benefits with an aggregate limit of fifteen thousand dollars
11 (\$15,000) per person per accident for economic loss resulting
12 from accidental bodily injury, as follows:

13 A. medical expenses;

14 B. eighty percent of loss of income from work not to
15 exceed four hundred dollars (\$400) per week;

16 C. if the injured person is not receiving benefits
17 for loss of income from work, replacement personal services loss
18 not to exceed two hundred dollars (\$200) per week; and

19 D. death, ten thousand dollars (\$10,000) if death of
20 the injured person results from and occurs within one year after
21 the date of the accident.

22 Section 5. [NEW MATERIAL] ADDED PERSONAL PROTECTION
23 COVERAGE. --Each personal protection insurer shall make available
24 added personal protection coverage, with coverage limits and
25 sublimits in excess of those prescribed for basic personal

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1 protection coverage, in increments up to an aggregate limit of
2 not less than one hundred thousand dollars (\$100,000) per person
3 per accident, in accordance with regulations adopted and
4 promulgated, and using coverage forms filed and approved, by the
5 superintendent.

6 Section 6. [NEW MATERIAL] PERSONS NOT ENTITLED TO
7 PERSONAL PROTECTION BENEFITS. -- Personal protection benefits
8 shall not be paid to or on behalf of an injured person if at the
9 time of the accident the injured person:

10 A. was committing a felony or was voluntarily
11 occupying a motor vehicle that he knew to be stolen;

12 B. was driving under the influence of intoxicating
13 liquor or drug;

14 C. was engaged in intentional misconduct in the
15 operation of the motor vehicle; or

16 D. was an uninsured motorist, whether occupying the
17 uninsured vehicle or otherwise.

18 Section 7. [NEW MATERIAL] PAYMENT OF PERSONAL PROTECTION
19 BENEFITS. -- Every contract providing personal protection benefits
20 shall provide for payment of benefits to:

21 A. the injured person;

22 B. the injured person's parent or guardian if the
23 injured person is an unemancipated minor or incompetent; or

24 C. the injured person's spouse or personal
25 representative if the injured person has died.

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1 Section 8. [NEW MATERIAL] LOSS OF INCOME FROM WORK--
2 LIMITATION.--Payment of basic personal protection benefits for
3 loss of income from work shall not be made for loss incurred
4 after the injured person's death or more than two years after
5 the date of the accident.

6 Section 9. [NEW MATERIAL] REVIEW OF MEDICAL EXPENSES--
7 LIMITATIONS.--

8 A. A personal protection insurer may review medical
9 expenses to assure that the expenses are reasonable and
10 necessary.

11 B. Payment of basic personal protection benefits for
12 medical expenses shall not be made for loss incurred more than
13 two years after the date of the accident.

14 Section 10. [NEW MATERIAL] REPLACEMENT PERSONAL SERVICES
15 LOSS--LIMITATION.--Payment of basic personal protection benefits
16 for replacement personal services loss shall not be made during
17 any period for which the injured person is receiving benefits
18 for loss of income from work. Payment of basic personal
19 protection benefits shall not be made for loss incurred after
20 the injured person's death, or more than two years after the
21 date of the accident.

22 Section 11. [NEW MATERIAL] GEOGRAPHIC APPLICATION OF
23 PERSONAL PROTECTION POLICIES.--

24 A. A personal protection insurer shall pay personal
25 protection benefits to a personal protection insured for

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1 accidental bodily injury sustained within any jurisdiction of
2 the United States, its territories and possessions and Canada.

3 B. Every personal protection policy issued pursuant
4 to the No-Fault Insurance Act shall provide coverage that
5 satisfies the compulsory financial responsibility requirements
6 of every jurisdiction within the United States, its territories
7 and possessions and Canada.

8 Section 12. [NEW MATERIAL] PRIORITY OF BENEFITS. --

9 A. Except as provided otherwise in Section 6 of the
10 No-Fault Insurance Act, personal protection policies are liable
11 to pay personal compensation benefits in the following order of
12 priority, up to their respective coverage limits:

13 (1) the policy covering an injured person's
14 employer's motor vehicle, if injury occurs in the course of the
15 person's operation or use of the motor vehicle or the person is
16 injured by the employer's motor vehicle while not engaged in the
17 operation or use of any motor vehicle;

18 (2) the policy covering a motor vehicle used
19 principally for transportation for hire of persons or property,
20 if the injured person was occupying the vehicle or was injured
21 by the vehicle while not engaged in the operation or use of any
22 motor vehicle;

23 (3) the policy covering a motor vehicle
24 involved in the accident, if the injured person was engaged in
25 the operation or use of the vehicle or was injured by the

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1 vehicle while not engaged in the operation or use of any motor
2 vehicle;

3 (4) a policy covering a motor vehicle not
4 involved in the accident, if the injured person is a named
5 insured; and

6 (5) a policy covering a motor vehicle not
7 involved in the accident, if the injured person is an insured
8 other than a named insured.

9 B. If two or more insurers are obligated to pay
10 personal protection benefits, the insurer against whom the claim
11 is first made shall pay the claim and may thereafter recover
12 from any other insurer at the same or a higher priority level
13 for the costs of the payments and for processing the claim.
14 Recovery from an insurer at the same priority level shall be
15 made pro rata, based on policy limits.

16 Section 13. [NEW MATERIAL] OTHER SOURCES OF INDEMNITY FOR
17 BASIC PERSONAL PROTECTION BENEFITS. --

18 A. Basic personal protection benefits coverage is
19 primary over all collateral benefits, except social security,
20 public assistance and workers' compensation benefits, which
21 shall be deducted from the basic personal protection benefits
22 payable to the injured person; provided that collateral benefits
23 so deducted shall not operate to reduce or be credited against
24 the limits of liability of the personal protection policy.

25 B. A payor of personal protection benefits,

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1 collateral benefits or other benefits as a result of an accident
2 shall not recover any amount against an injured person or his
3 personal protection insurer pursuant to a right of subrogation
4 or otherwise, and shall not be subrogated to any rights the
5 injured person or his personal protection insurer may have
6 against another person, except as provided in Subsection C of
7 this section.

8 C. A personal protection insurer is subrogated, to
9 the extent of its payment of personal protection benefits, to
10 all of the rights of its personal protection insured with
11 respect to a motor vehicle accident caused in whole or in part
12 by:

- 13 (1) negligence of an uninsured motorist;
- 14 (2) negligence of the owner or operator of a
15 motor vehicle that results in serious injury;
- 16 (3) driving under the influence of intoxicating
17 liquor or drug; or
- 18 (4) intentional misconduct.

19 Section 14. [NEW MATERIAL] LEGAL LIABILITY--EXEMPTION OF
20 PERSONAL PROTECTION INSURED. --

21 A. No injured person shall have a claim or cause of
22 action in tort or otherwise against any personal protection
23 insured, including any person for whom that personal protection
24 insured is vicariously liable, for accidental bodily injury or
25 property damage that arises from the ownership, operation or use

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1 of a motor vehicle, except for uncompensated economic loss,
2 subject to the provisions of Subsections B, C, D and E of this
3 section.

4 B. No uninsured motorist shall have any right to
5 personal compensation benefits or any cause of action in tort or
6 otherwise against a personal protection insured arising from an
7 accident, except for economic loss from accidental bodily injury
8 in excess of fifteen thousand dollars (\$15,000), or from
9 property damage in excess of ten thousand dollars (\$10,000),
10 unless the personal protection insured was driving under the
11 influence of intoxicating liquor or drug or engaged in
12 intentional misconduct.

13 C. A personal protection insured retains his claims
14 and causes of action in tort and otherwise with respect to a
15 motor vehicle accident caused in whole or in part by:

- 16 (1) negligence of an uninsured motorist;
17 (2) negligence of the owner or operator of a
18 motor vehicle that results in serious injury;
19 (3) driving under the influence of intoxicating
20 liquor or drug; or
21 (4) intentional misconduct.

22 As part of such a claim, the injured person may claim and
23 recover personal protection benefits up to the limits specified
24 in the other person's personal protection policy, if any, plus
25 reasonable attorney fees under Subsection D of this section.

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1 D. Any recovery pursuant to Subsections A through C
2 of this section shall include reasonable expenses and attorney
3 fees incurred in recovering damages and benefits. No part of
4 the expenses and attorney fees may be deducted from benefits due
5 the injured person; provided, that all or part of the attorney
6 fees may be deducted from the benefits otherwise owing if all or
7 part of the claim was fraudulent.

8 E. No person driving under the influence of
9 intoxicating liquor or drug or engaging in intentional
10 misconduct shall have any claim or cause of action in tort or
11 otherwise against a personal protection insured.

12 Section 15. [NEW MATERIAL] CAUSES OF ACTION FOR INJURY--
13 DEDUCTION. --No deduction shall be made from personal protection
14 benefits based on the value of a cause of action for injury;
15 provided that after recovery is received, a deduction may be
16 made in the amount of the net recovery, exclusive of attorney
17 fees and expenses incurred in obtaining the recovery. If
18 personal protection benefits have already been received, the
19 personal protection insurer may require the recipient to
20 reimburse a sum equal to the personal protection benefits
21 received, not to exceed the net recovery. The insurer shall
22 have a lien on the net recovery to this extent.

23 Any remainder of the net recovery from such a cause of
24 action shall be credited against future loss as it accrues,
25 until an amount equal to the net recovery has been deducted.

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1 Any additional loss shall then be payable from personal
2 protection benefits, up to the applicable coverage limits.

3 Any deduction from loss pursuant to this section shall not
4 operate to reduce or be credited against the coverage limits of
5 the personal compensation policy.

6 Section 16. [NEW MATERIAL] PERIODIC PAYMENT OF PERSONAL
7 PROTECTION BENEFITS. --

8 A. Personal protection benefits are payable monthly
9 as loss accrues, except as provided otherwise in Subsection B of
10 this section. Benefits are overdue if they are not paid within
11 thirty days after the personal protection insurer receives
12 reasonable proof of loss; provided that the personal protection
13 insurer may accumulate claims for a period of not to exceed one
14 month, in which case benefits are not overdue if they are paid
15 within twenty days after the period of accumulation.

16 B. If reasonable proof of loss is not supplied for
17 the whole claim, the amount supported by reasonable proof is
18 overdue if it is not paid as provided in Subsection A of this
19 section. Any part of the unpaid remainder of the claim that is
20 later supported by reasonable proof is overdue if it is not paid
21 within thirty days after the insurer receives the proof.

22 C. For purposes of this section, payment shall be
23 deemed made on the date a draft or other valid instrument is
24 mailed or, if not mailed, the date of delivery to the claimant.
25 Benefits not timely paid shall be subject to interest at the

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1 rate of one and one-half percent per month or portion of a month
2 they are late, compounded monthly. Interest due shall be paid
3 automatically without demand at the time the benefit is paid.

4 D. If overdue benefits are recovered against a
5 personal protection insurer or are paid by a personal protection
6 insurer only after complaint to the superintendent or the filing
7 of suit, reasonable expenses and attorney fees shall be paid as
8 provided in Subsection D of Section 14 of the No-Fault Insurance
9 Act.

10 E. A personal protection insurer may pay personal
11 protection benefits directly to a person who supplies necessary
12 products, services or facilities to the injured person, subject
13 to the provisions on timely payment specified in Subsections A
14 through D of this section.

15 Section 17. [NEW MATERIAL] CANCELLATION OR NONRENEWAL
16 PROHIBITED--PENALTY. --A personal protection insurer shall not
17 cancel, refuse to renew or increase the premium of a personal
18 protection policy based solely on a claim for personal
19 protection benefits or collision damage to an insured motor
20 vehicle, unless the insured was at least fifty percent at fault
21 for the accident. In addition to any other penalties provided
22 by law, the superintendent shall impose a civil penalty of one
23 thousand dollars (\$1,000) for each violation of this section.

24 Section 18. [NEW MATERIAL] VERIFICATION OF ENTITLEMENT TO
25 BENEFITS. --

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1 A. If requested by a personal protection insurer, an
2 employer shall provide confirmation of employment and of
3 personal protection benefits coverage on a form approved by the
4 superintendent regarding an employee who has filed a claim for
5 personal protection benefits.

6 B. Every person providing services upon which a
7 claim for medical expenses is based shall furnish a written
8 report of the history, condition, treatment, dates and costs of
9 the injured person's treatment to the person's personal
10 protection insurer, upon request. Every such person shall also
11 produce and permit the inspection and copying of its records
12 regarding the medical treatment.

13 C. No cause of action for violation of a physician-
14 patient privilege or invasion of the right of privacy may be
15 asserted against any provider complying with the provisions of
16 this section.

17 D. Any person requesting records pursuant to this
18 section shall pay all reasonable costs connected therewith and
19 shall be responsible to assure the confidentiality of the
20 records.

21 Section 19. [NEW MATERIAL] MANAGED CARE. -- A personal
22 protection insurer may use managed care systems, including
23 health maintenance and preferred provider organizations, and may
24 require an injured person to obtain health care through a
25 managed care system designated by the personal protection

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1 insurer, if the named insured opts at the time of purchase of
2 personal protection coverage to be subject to a managed care
3 system at an appropriately reduced premium. The value of
4 benefits shall be based on the actual cost to the insurer for
5 purposes of personal protection benefits limits.

6 Section 20. [NEW MATERIAL] SAFETY EQUIPMENT. --The
7 superintendent shall adopt rules that authorize personal
8 protection insurers to institute incentives for personal
9 protection insureds to install, maintain and make use of safety
10 devices such as seat and harness belts, air bags and child
11 restraint systems. Incentives shall not include loss of
12 coverage if such devices are not used.

13 Section 21. [NEW MATERIAL] REGULATIONS. --The
14 superintendent may adopt and promulgate regulations, policies
15 and procedures to implement the provisions of the No-Fault
16 Insurance Act.

17 Section 22. [NEW MATERIAL] ARBITRATION. --A personal
18 protection insurer may include an arbitration clause in any
19 personal protection policy as a method of resolving disputes
20 regarding personal protection coverage or benefits between a
21 personal protection insurer and an injured person.

22 Section 23. [NEW MATERIAL] OUT-OF-STATE VEHICLES. --

23 A. Each insurer authorized to transact business or
24 transacting business in New Mexico shall file with the
25 superintendent, on a form approved by him, a sworn statement

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1 that all of its contracts of motor vehicle liability insurance
2 issued outside New Mexico covering the operation or use of a
3 motor vehicle shall be deemed to meet the requirements and
4 satisfy the minimum benefits provisions of Section 3 of the No-
5 Fault Insurance Act while the motor vehicle is in this state.

6 B. If a person is entitled to personal protection
7 benefits or their equivalent under the requirements of more than
8 one state, the person shall elect to recover under the laws of
9 one state. The election represents the exclusive source of
10 recovery of all personal protection benefits, or their
11 equivalent, paid or payable under the financial responsibility
12 requirements of that or any other state.

13 C. An out-of-state motor vehicle not subject to the
14 requirement of a personal protection policy under Section 3 of
15 the No-Fault Insurance Act shall be deemed to be covered by such
16 a policy if it is covered by insurance that provides coverage
17 meeting the minimum financial responsibility requirements of New
18 Mexico. In that case, occupants of the vehicle and any persons
19 not occupying any motor vehicle who are injured by the vehicle
20 shall have the rights and responsibilities of, and be subject to
21 the limitations on, personal protection insureds pursuant to the
22 No-Fault Insurance Act.

23 Section 24. Section 59A-7-7 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 113) is amended to read:

25 "59A-7-7. "VEHICLE" INSURANCE DEFINED. -- "Vehicle"

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1 insurance is insurance covering:

2 A. physical damage. Insurance against loss of or
3 damage to any land vehicle or aircraft or any draft or riding
4 animal resulting from or incident to ownership, maintenance or
5 use of any such vehicle, aircraft or animal;

6 B. public liability and property damage. Insurance
7 against any hazard or cause, and against any loss, liability or
8 expense resulting from or incident to ownership, maintenance or
9 use of any such vehicle, aircraft or animal;

10 C. cargo. Insurance against loss of or damage to
11 property contained in a vehicle or being loaded or unloaded
12 therein or therefrom or incident to the ownership, maintenance
13 or use of any such vehicle, aircraft or animal; [and]

14 D. medical payments. Insurance for payment on
15 behalf of the injured party or for reimbursement of the insured
16 for payment, irrespective of legal liability of the insured, of
17 medical, hospital, surgical and disability benefits, to persons
18 injured and funeral and death benefits to dependents,
19 beneficiaries or personal representatives of persons killed as
20 the result of an accident, resulting from or incident to
21 ownership, maintenance or use of any such vehicle, aircraft or
22 animal. Such coverage shall not be deemed to be "health"
23 insurance for purposes of the Insurance Code; and

24 E. personal protection. Insurance with benefits as
25 described in the No-Fault Insurance Act. Personal compensation

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1 insurance shall not be deemed health insurance. "

2 Section 25. Section 59A-32-3 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 521) is amended to read:

4 "59A-32-3. PURPOSE OF ASSIGNED RISK PLAN. -- The purpose of
5 the assigned risk plan is to provide for the equitable
6 distribution and apportionment among insurers authorized to
7 transact in this state the business of [~~automobile and~~] motor
8 vehicle bodily injury, personal protection, property damage
9 liability and physical damage insurance, of insurance afforded
10 applicants who are in good faith entitled to, but who are unable
11 to procure, such insurance through ordinary methods. "

12 Section 26. Section 59A-32-5 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 523) is amended to read:

14 "59A-32-5. REQUIREMENTS OF ASSIGNED RISK PLANS. -- Any such
15 agreement or plan for the assignment of risks involving
16 [~~automobile and~~] motor vehicle bodily injury, personal
17 protection and property damage liability insurance shall include
18 provision for:

19 A. reasonable rules governing the equitable
20 distribution of risks by direct insurance, reinsurance or
21 otherwise, and by the assignment of risks to insurers
22 participating in the plan;

23 B. rates and reasonable rate modifications which
24 shall be applicable to such risks and which shall not be
25 excessive, inadequate or unfairly discriminatory;

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1 C. the limits of liability which any insurer to whom
2 a risk is assigned shall be required to assume; and

3 D. a method whereby applicants for insurance,
4 persons insured and insurers under the plan may have a hearing
5 on grievances and the right to appeal from the decision on any
6 such grievance to the superintendent. "

7 Section 27. Section 59A-32-6 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 524) is amended to read:

9 "59A-32-6. REVIEW OF PROPOSED ASSIGNED RISK PLANS. -- Every
10 such plan for the assignment of risks involving [~~automobile and~~]
11 motor vehicle bodily injury, personal protection and property
12 damage liability insurance shall be filed in writing with the
13 superintendent. The superintendent shall review the plan as
14 soon as reasonably possible after filing, to determine whether
15 or not it meets the requirements of Section [~~523 of this~~
16 ~~article~~] 59A-32-5 NMSA 1978. Each plan shall be on file with
17 the superintendent for a waiting period of thirty [~~(30)~~] days
18 before it becomes effective, unless sooner approved in writing.
19 Unless disapproved in writing by the superintendent within the
20 thirty [~~(30)~~] day waiting period, a plan shall be deemed
21 approved and shall become effective upon the expiration of that
22 period. "

23 Section 28. Section 59A-32-8 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 526) is amended to read:

25 "59A-32-8. FAILURE TO FILE PLAN-- ASSIGNED RISK PLAN

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1 PRESCRIBED. -- If no plan [~~which~~] that meets the requirements of
2 Section [~~523 of this article above~~] 59A-32-5 NMSA 1978 has been
3 filed with the superintendent within ninety [~~(+90)~~] days after
4 [~~June 30, 1959~~] the effective date of the No-Fault Insurance
5 Act, or within the period stated in any order [~~which~~] that
6 disapproves an existing plan, the superintendent may formulate
7 and prescribe a plan [~~which~~] that does meet such requirements,
8 after hearing or consultation with insurers authorized to
9 transact in this state the business of [~~automobile and~~] motor
10 vehicle bodily injury, personal protection and property damage
11 liability insurance. When any plan [~~or plans~~] or amendment
12 thereto has [~~or have~~] been approved or prescribed, no insurer to
13 which [~~such~~] the plan is applicable shall thereafter issue any
14 policy of such insurance, or undertake to transact such business
15 in this state, unless the insurer participates in [~~such~~] the
16 plan. "

17 Section 29. Section 66-1-4.3 NMSA 1978 (being Laws 1990,
18 Chapter 120, Section 4) is amended to read:

19 "66-1-4.3. DEFINITIONS. -- As used in the Motor Vehicle
20 Code:

21 A. "camping body" means a vehicle body primarily
22 designed or converted for use as temporary living quarters for
23 recreational, camping or travel activities;

24 B. "camping trailer" means a camping body that
25 exceeds neither eight feet in width nor forty feet in length,

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1 mounted on a chassis, or frame with wheels, designed to be drawn
2 by another vehicle and that has collapsible partial side walls
3 that fold for towing and unfold at the campsite;

4 C. "cancellation" means that a driver's license is
5 annulled and terminated because of some error or defect or
6 because the licensee is no longer entitled to the license, but
7 cancellation of a license is without prejudice, and application
8 for a new license may be made at any time after cancellation;

9 D. "casual sale" means the sale of a motor vehicle
10 by the registered owner of the vehicle if the owner has not sold
11 more than four vehicles in that calendar year;

12 ~~[E. "certified motor vehicle liability policy" means~~
13 ~~an owner's policy or a driver's policy of liability insurance to~~
14 ~~or for the benefit of the person named therein as insured,~~
15 ~~certified as provided in the Motor Vehicle Code and meeting the~~
16 ~~requirements of the Motor Vehicle Code as evidence of financial~~
17 ~~responsibility and issued by an insurance carrier duly~~
18 ~~authorized to transact business in New Mexico;~~

19 F.] E. "chassis" means the complete motor vehicle,
20 including standard factory equipment, exclusive of the body and
21 cab;

22 [G.] E. "collector" means a person who is the owner
23 of one or more vehicles of historic or special interest who
24 collects, purchases, acquires, trades or disposes of these
25 vehicles or parts thereof for the person's own use in order to

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1 preserve, restore and maintain a similar vehicle for hobby
2 purposes;

3 ~~[H.]~~ G. "combination" means any connected assemblage
4 of a motor vehicle and one or more semitrailers, trailers or
5 semitrailers converted to trailers by means of a converter gear;

6 ~~[I.]~~ H. "combination gross vehicle weight" means the
7 sum total of the gross vehicle weights of all units of a
8 combination;

9 ~~[J.]~~ I. "commerce" means the transportation of
10 persons, property or merchandise for hire, compensation, profit
11 or in the furtherance of a commercial enterprise in this state
12 or between New Mexico and a place outside New Mexico, including
13 a place outside the United States;

14 ~~[K.]~~ J. "commercial motor vehicle" means a motor
15 vehicle used in commerce:

16 (1) if the vehicle has a declared gross vehicle
17 weight rating of twenty-six thousand one or more pounds;

18 (2) if the vehicle is designed to transport
19 sixteen or more passengers, including the driver; or

20 (3) if the vehicle is transporting hazardous
21 materials and is required to be placarded pursuant to applicable
22 law;

23 ~~[L.]~~ K. "controlled-access highway" means every
24 highway, street or roadway in respect to which owners or
25 occupants of abutting lands and other persons have no legal

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1 right of access to or from the highway, street or roadway except
2 at those points only and in the manner as may be determined by
3 the public authority having jurisdiction over the highway,
4 street or roadway;

5 [M-] L. "controlled substance" means any substance
6 defined in Section 30-31-2 NMSA 1978 as a controlled substance;

7 [N-] M. "converter gear" means any assemblage of one
8 or more axles with a fifth wheel mounted thereon, designed for
9 use in a combination to support the front end of a semitrailer
10 but not permanently attached thereto. A converter gear shall
11 not be considered a vehicle, as that term is defined in Section
12 66-1-4.19 NMSA 1978, but weight attributable thereto shall be
13 included in declared gross weight;

14 [O-] N. "conviction" means the alleged violator has
15 entered a plea of guilty or nolo contendere or has been found
16 guilty in the trial court and has waived or exhausted all rights
17 to an appeal;

18 [P-] O. "crosswalk" means:

19 (1) that part of a roadway at an intersection
20 included within the connections of the lateral lines of the
21 sidewalks on opposite sides of the highway measured from the
22 curbs or, in the absence of curbs, from the edges of the
23 traversable roadway; and

24 (2) any portion of a roadway at an intersection
25 or elsewhere distinctly indicated for pedestrian crossing by

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1 lines or other markings on the surface; and

2 [Q-] P. "curb cut" means a short ramp through a curb
3 or built up to the curb."

4 Section 30. Section 66-1-4.6 NMSA 1978 (being Laws 1990,
5 Chapter 120, Section 7) is amended to read:

6 "66-1-4.6. DEFINITIONS.--As used in the Motor Vehicle
7 Code:

8 A. "farm tractor" means every motor vehicle designed
9 and used primarily as a farm implement for drawing plows, mowing
10 machines and other implements of husbandry;

11 ~~[B. "financial responsibility" means the ability to~~
12 ~~respond in damages for liability resulting from traffic~~
13 ~~accidents arising out of the ownership, maintenance or use of a~~
14 ~~motor vehicle of a type subject to registration under the laws~~
15 ~~of New Mexico, in the amounts not less than that specified in~~
16 ~~the Mandatory Financial Responsibility Act; the term includes a~~
17 ~~motor vehicle liability policy, a certified motor vehicle~~
18 ~~liability policy, a surety bond or evidence of a sufficient cash~~
19 ~~deposit with the state treasurer;~~

20 [E-] B. "first offender" means a person who for the
21 first time under state or federal law or municipal ordinance has
22 been adjudicated guilty of the charge of driving a motor vehicle
23 while under the influence of intoxicating liquor or any other
24 drug that renders the person incapable of safely driving a motor
25 vehicle, regardless of whether the person's sentence was

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1 suspended or deferred;

2 ~~[D-]~~ C. "flammable liquid" means any liquid that has
3 a flash point of seventy degrees fahrenheit or less, as
4 determined by a tagliabue or equivalent closed-cup test device;

5 ~~[E-]~~ D. "foreign jurisdiction" means any
6 jurisdiction other than a state of the United States or the
7 District of Columbia;

8 ~~[F-]~~ E. "foreign vehicle" means every vehicle of a
9 type required to be registered under the provisions of the Motor
10 Vehicle Code brought into this state from another state,
11 territory or country; and

12 ~~[G-]~~ F. "freight trailer" means any trailer,
13 semitrailer or pole trailer drawn by a truck tractor or road
14 tractor, and any trailer, semitrailer or pole trailer drawn by a
15 truck that has a gross vehicle weight of more than twenty-six
16 thousand pounds, but the term does not include manufactured
17 homes, trailers of less than one-ton carrying capacity used to
18 transport animals, or fertilizer trailers of less than three
19 thousand five hundred pounds empty weight. "

20 Section 31. Section 66-1-4.11 NMSA 1978 (being Laws 1990,
21 Chapter 120, Section 12) is amended to read:

22 "66-1-4.11. DEFINITIONS. --As used in the Motor Vehicle
23 Code:

24 A. "mail" means any item properly addressed with
25 postage prepaid delivered by the United States postal service or

. 113537.3

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1 any other public or private enterprise primarily engaged in the
2 transport and delivery of letters, packages and other parcels;

3 B. "manufactured home" means a moveable or portable
4 housing structure that exceeds either a width of eight feet or a
5 length of forty feet, constructed to be towed on its own chassis
6 and designed to be installed with or without a permanent
7 foundation for human occupancy;

8 C. "manufacturer" means every person engaged in the
9 business of constructing or assembling vehicles of a type
10 required to be registered under the Motor Vehicle Code;

11 D. "manufacturer's certificate of origin" means a
12 certification, on a form supplied by or approved by the
13 division, signed by the manufacturer that the new vehicle
14 described therein has been transferred to the New Mexico dealer
15 or distributor named therein or to a dealer duly licensed or
16 recognized as such in another state, territory or possession of
17 the United States and that such transfer is the first transfer
18 of the vehicle in ordinary trade and commerce; every such
19 certificate shall contain space for proper reassignment to a New
20 Mexico dealer or to a dealer duly licensed or recognized as such
21 in another state, territory or possession of the United States,
22 and the certificate shall contain a description of the vehicle,
23 the number of cylinders, type of body, engine number and the
24 serial number or other standard identification number provided
25 by the manufacturer of the vehicle;

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1 E. "metal tire" means every tire of which the
2 surface in contact with the highway is wholly or partly of metal
3 or other hard nonresilient material, except that a snow tire
4 with metal studs designed to increase traction on ice or snow is
5 not considered a metal tire;

6 F. "moped" means a two-wheeled or three-wheeled
7 vehicle with an automatic transmission and a motor having a
8 piston displacement of less than fifty cubic centimeters, that
9 is capable of propelling the vehicle at a maximum speed of not
10 more than thirty miles an hour on level ground, at sea level;

11 G. "motorcycle" means every motor vehicle having a
12 seat or saddle for the use of the rider and designed to travel
13 on not more than three wheels in contact with the ground,
14 excluding a tractor;

15 H. "motor home" means a camping body built on a
16 self-propelled motor vehicle chassis so designed that seating
17 for driver and passengers is within the body itself; and

18 I. "motor vehicle" means every vehicle that is self-
19 propelled and every vehicle that is propelled by electric power
20 obtained from batteries or from overhead trolley wires, but not
21 operated upon rails; but for the purposes of the Mandatory
22 Financial Responsibility Act, "motor vehicle" does not include
23 "special mobile equipment" [~~;~~and

24 J. ~~"motor vehicle liability policy" means an owner's~~
25 ~~policy or a driver's policy of liability insurance, providing~~

